BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A

Florida Supreme Court
Case No.: SC00-2226

JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143

ANSWER AND DEFENSES TO AMENDED FORMAL CHARGES

Comes now, Respondent CYNTHIA A. HOLLOWAY and files this Answer and Defenses to Amended Formal Charges filed by the Judicial Qualifications Commission pursuant to FJQC Rule 9 and says:

RESPONSE TO ALLEGATION 1. a.

With regard to Respondent's telephone call to Detective Yaratch, it is significant to understand what had taken place in the preceding days. Parker Adair had made certain statements regarding possible sexual misconduct by her biological father to a school interviewer. Children and Family Services was contacted about this possible sexual abuse, and the child was at risk of being removed from her home and placed in shelter status. Parker was 4 years old at the time. Robin Adair and Cindy Tigert called the Respondent very upset that the anticipated investigation was not being conducted. Apparently no official had spoken to the teacher to whom the statements were made or to the child. The Respondent called Detective Yaratch to request that **if** an interview had to be done with the child, (which the Respondent thought had to be done at the Children's Advocacy Center), and/or the teacher, that it please be done as soon as possible. The respondent did not intend to influence Detective Yaratch regarding the outcome. She was simply concerned that the facts were growing stale and asked that Detective Yaratch please not let this slip through the cracks.

Detective Yaratch stated in his deposition, taken August 4, 2000, that "…she did not specifically say anything to intimidate, coerce or try to influence, just the fact that I know this person and that contact was inappropriate. I am not saying she did anything wrong." (Yaratch deposition page 41, line 7). He again said, "She did not say anything inappropriate." (Yaratch deposition page 42, line 5).

RESPONSE TO ALLEGATION 1. b.

With respect to the second contact with Detective Yaratch on or about March 3, 2000, the Respondent does not recall this conversation and doubts that it took place. The Respondent was out of the country from February 27, 2000 through March 2, 2000. The Respondent did not return to the office until March 3, 2000. The Respondent had two extremely heavy dockets that day, including 135 cases on the morning docket and 96 cases set for pre-trial in the afternoon. The Respondent's judicial assistant, Janice Wingate, does not call her to leave the bench except in the case of an emergency. The Respondent has checked her message slips and they do not reflect that she received a message from the detective that day or any day thereafter. In addition, the Respondent's calendar shows that she had a noon appointment that day out of the office. Ms. Wingate does not recall receiving a call from the detective that day. Ms. Wingate only recalls the call from him on February 24, 2000.

Furthermore, the police report written by Detective Yaratch, purportedly on March 3, 2000, does not contain any reference to a second conversation with the Respondent, nor any indication that the detective ever discussed the outcome of his investigation with Respondent in anyway or at anytime. To this day, the only knowledge the Respondent has as to the outcome of the investigation is what is contained in the police report attached to Detective Yaratch's deposition.

Further, the phone records cast doubt on Yaratch's "second" phone call. The only number Yaratch had was for a cell phone – those records do not show a call in the time frame referred by Yaratch.

RESPONSE TO

ALLEGATION 1. c. & 2. a.

As a result of the allegations Parker Adair expressed to an interviewer at a private school, a shelter hearing was held on Saturday, February 26, 2000 and Parker was in fact sheltered with her day school teacher on February 26, 2000. This ruling was made contrary to the recommendations of Children and Family Services, which recommended sheltering with the mother. The shelter hearing was, by coincidence, conducted before Judge Stoddard. Judge Stoddard was the presiding judge over the custody dispute and also happened to be the duty judge the weekend of the shelter hearing. At the shelter hearing, attorney Ron Russo announced that he had obtained an emergency hearing for Monday, February 28, 2000. Because the allegation of sexual misconduct had only been made 3 or 4 days earlier and this was a Saturday, the emergency hearing time must have been obtained within that 3 to 4 day time period. The Respondent left the country for a short vacation on Sunday, February 27, 2000 and assumed that the shelter situation would be resolved at the February 28, 2000 hearing. On the evening of March 2, 2000, the Respondent returned from her vacation to learn from Cindy Tigert that Parker was still in shelter. On the morning of March 3, 2000, Robin Adair called the Respondent hysterical that her attorney could not get a hearing on the shelter status for another week and one-half. Ms. Adair also complained that Ron Russo, attorney for Mark Johnson, had been able to schedule the emergency hearing on February 28, 2000, on very short notice. Ms. Adair could not understand why she could not get an earlier hearing on the shelter status in light of Mr.

Russo's ability to quickly obtain hearing time on unrelated matters that certainly did not rise to the level of seriousness of removing this young child from her home. Thinking of a four year old child being taken from her family and the confusion and anxiety the child must have been experiencing, the Respondent went to ask Judge Stoddard to provide the parties with an earlier hearing date on the shelter status. It should be pointed out that the Respondent did not interrupt a hearing or any other court proceeding and that the only persons present were courthouse personnel. The Respondent believes she told Judge Stoddard that neither party probably deserved the child but that surely this 4 year old child should not continue to live in shelter status with a teacher when there were other family members with whom she could live. The Respondent was very emotionally distraught during her conversation with Judge Stoddard due to her concern for the emotional well being of a child of whom she is very fond, and therefore, she exercised poor judgment. However, the Respondent stresses that she was not trying to influence Judge Stoddard's decisions regarding this case; her only concern was that a hearing occur as quickly as possible so the child could be returned to family members. The Respondent would also like to clarify that she was neither upset with Judge Stoddard, nor critical of Judge Stoddard's decisions in this case. Simply, Respondent was quite upset with the circumstances regarding the fact that the 4 year old remained in shelter status. The Respondent is not and has never been critical of Judge Stoddard's decisions given the difficult facts and circumstances of this case. It should also be pointed out that Judge Stoddard's statement to the JQC investigator indicates that, for other reasons, Judge Stoddard had already decided to recuse himself from the Adair v. Johnson case.

The Respondent has since spoken to Judge Stoddard to express her sincere apology for this emotional behavior.

RESPONSE TO ALLEGATION 3.

With all due respect to the Investigative Panel, it is patently unfair and contrary to the Florida Rules of Civil Procedure and Florida case law to separate the deposition from the errata sheet. Despite being contrary to Florida law, the Investigative Panel's separation of the deposition from the errata sheet is the only way one can characterize the Respondent's testimony as false. As the court stated in Motel 6, Inc. v. Dowling, 595 So.2d 260 (1st DCA Fla., 1992):

> Rule 1.310(e), Florida Rules of Civil Procedure, expressly permits a witness to review his deposition and make corrections, in both the form and substance, to his testimony....

One of the reasons a witness reads his deposition is to make permissible corrections to his testimony. **Once the changes are made, they become a part of the deposition just as if the deponent gave the testimony while being examined,** and they can be read at trial just as any other part of the deposition is subject to use at trial....

If the motel (*the examiner*) wished to cross-examine Hickox (*the deponent*) regarding the changes, the burden was on the motel to reopen the deposition. (at pages 261 & 262 emphasis added) See also, Feltner v. Internationale Nederlanden Bank, N.V., 622 So.2d 123 (4th DCA Fla., 1993).

In addition, the facts and circumstances surrounding the taking of this deposition are extremely significant. The deposition taken by Mark Johnson, a pro se litigant, was conducted on the day of Harry Lee Coe, III's funeral. The Respondent attended the service and proceeded immediately thereafter to the deposition. The Respondent had been extremely upset by the suicide and the events of the preceding week. In fact, she was almost an hour late arriving at the deposition. Notwithstanding the unusual events of the day and the Respondent's desire to have the deposition rescheduled, Mr. Johnson indicated that he had come from Washington, D.C., and wanted to proceed at that time. In fact, the Respondent was quite candid at the beginning of the deposition that she was under considerable emotional distress and not thinking as clearly as usual.[1]

Further, Mr. Johnson had continuously threatened the Respondent personally, including the incident at Jackson's Restaurant, and had told third parties that he intended to "get her job." Mr. Johnson has indicated on numerous occasions that he is politically well connected. In addition, prior to the Respondent's deposition, she had been made aware of an investigation by the Judicial Qualifications Commission and because of his threats in the past, the Respondent assumed Mr. Johnson had instigated the investigation.

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[1] On page 6, lines 21 through page 7, line 1, Respondent gave the following testimony:

> Q. (By Mr. Johnson) When did you and I first meet?
>
> A. I think at the Tigert residence. I don't know when. I couldn't even narrow it down to a year at this point. **Obviously I've had a fairly bad day and so I'm a little confused on things.** I can't think of the time. If I recall you were swimming in the pool with Parker. (Emphasis Added)

At the time Mr. Johnson asked the Respondent about speaking to Detective Yaratch, the Respondent simply did not recall the conversation. Even the detective indicates that it was a brief conversation that had taken place five months prior to the deposition. Certainly the events of the day had taken its toll on her concentration and recall. Once the deposition was over and the Respondent returned to her office, she remembered the conversation with Detective Yaratch while discussing the matter with her staff. The Respondent knew that this answer could be corrected on an errata sheet and she called her attorney immediately to advise him of her recollection.

RESPONSE TO ALLEGATION 4.

Because of the previous explanation regarding the Florida Rules of Civil Procedure and case law, this testimony and the errata sheet must also be considered together or as one. In preparation for this deposition, the Respondent's counsel had advised her that the Respondent was being deposed as a fact witness regarding the pending custody case. (As set forth above, the Respondent had already testified twice at hearings involving this dispute and, according to what Mr. Johnson had told her attorney, the Respondent was listed as a possible witness by Robin Adair). The Respondent was instructed to only answer the question asked and not to provide additional or gratuitous information. The Respondent's lawyers further instructed her that they did not intend to allow Mr. Johnson to ask questions of her regarding her conversation of March 3, 2000, with Judge Stoddard. It was their opinion that, knowing the investigation was pending, any questions concerning the subject of the JQC investigation would only be intended as harassment. The Respondent was informed that if Mr. Johnson asked such questions, an appropriate objection would be made, after which Mr. Johnson could attempt

to file a motion to compel and that Respondent would be entitled to seek a motion for a protective order. This course of action is allowed by the Florida Rules of Civil Procedure and there is nothing in the Code of Judicial Conduct that limits the Respondent's ability to avail herself of the protections of those rules, especially given Mr. Johnson's threats and the other facts and circumstances surrounding this deposition. It was the Respondent's attorney's opinion that, because Judge Stoddard had already recused himself before the taking of her deposition, any inquiry as to her contact with Judge Stoddard should have come from the JQC, not from Mr. Johnson. Further, any probative value to her answering these questions was outweighed by their harassing nature. It is respectfully submitted that whether or not Respondent's counsel's advice or opinion was correct was a matter of law and not of ethics.

Respondent has previously provided affidavits from C. Todd Alley, Esquire and James T. Holloway, Esquire confirming the advice she was given and their intention to object to questions concerning the March 3, 2000 conversation with Judge Stoddard.

When Mr. Johnson asked the Respondent whether or not she had contacted Judge Stoddard by phone or saw him, the Respondent construed those questions to relate to the events of the Saturday (February 26, 2000) when she learned Parker had been sheltered and, therefore, she answered no. The questions were asked as part of a series of questions relating to the Saturday shelter hearing and it should be noted that Judge Stoddard was the judge who presided over the hearing on that Saturday. The Respondent's lawyers also felt the questions related to that Saturday as they had advised her that they would object to any other questions and no such objection was registered at the time. Ray Brooks, the attorney for the Petitioner, Robin Adair, who was also present at the deposition, has testified that he too,

recalls that this series of questions related to what actions the Respondent took, if any, on that particular Saturday. Mr. Brooks states that if he had believed the questions were not so limited he would have made objections himself. The manner, tone, context and cadence in which this series of questions was asked left the inescapable conclusion that these questions were with regard to the Saturday of the shelter hearing.

Further, it is the Respondent's belief that Mr. Johnson himself understood those questions and answers to be with regard to the Saturday of the shelter hearing in that, during the deposition, Mr. Johnson asked additional questions about Judge Stoddard's recusal and other contact the Respondent may have had with him. At that time the Respondent's counsel, as he had informed Respondent he would, objected to the questions and instructed her not to answer. (Holloway deposition page 39, line 16 and page 41, line 5)

RESPONSE TO ALLEGATION 5.

The Respondent has previously provided the affidavits of her attorneys outlining when she notified them of the need to create an errata sheet and about her recollection of the conversation. In furtherance of this position, Ray Brooks, the attorney for the petitioner in the custody dispute, executed an affidavit, previously provided to the JQC outlining the sequence of this disclosure and that the errata sheet was already being prepared before the deposition of Detective Yaratch was taken.

Given the Florida Rules of Civil Procedure and the case law concerning the use of errata sheets, the deposition testimony set forth above must be read as follows as to the conversation with Detective Yaratch:

Q. Did you ever speak to the detective?

A. I've spoken to the detective a lot, but not necessarily about this case. I don't really recall whether I spoke to him directly or not. I don't believe that I did. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, I informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion.

The Respondent adamantly denies that her testimony relating to her conversation with Detective Yaratch was false and misleading because as corrected it was a truthful and complete account of her conversation with Detective Yaratch. The Respondent related a description of the conversation to the best of her recollection at the time. Unlike Detective Yaratch, she did not have a police report to testify from or to use to refresh her recollection. The Respondent's testimony is not inconsistent with the detective except with respect to a second conversation, which Respondent does not recall and questions. With respect to that conversation, Respondent would incorporate her response to Allegation 1.

The Respondent does not believe that her clarifications with regard to the questions concerning Judge Stoddard contained in the errata sheet are in any way false, incomplete or misleading. The errata sheet merely clarified that the temporal context of her answers was limited to the referenced Saturday morning. It was prepared in an abundance of caution because when reviewing the "black and white" transcript Respondent became concerned that someone might attempt to take those questions completely out of context by expanding the time frame beyond the specifically referenced Saturday morning (which appears to be what the investigative panel has done). Given the decision not to allow Mr.

Johnson to utilize the domestic court as a vehicle by which he could further his avowed intent to "get her job," the manner in which the errata sheet was prepared should be completely understandable.

Again, given the Florida Rules of Civil Procedure and the case law quoted above as to the effect of errata sheets, the deposition testimony concerning the contact with Judge Stoddard must be read as follows:

A. [By Respondent] When did you learn that Parker [the daughter of the petitioner and respondent] had been sheltered?

A. On a Saturday morning [Saturday, February 26, 2000]. I don't really recall the date or the time. I was at the baseball field, I think, or softball field.

Q. Did Cindy Tigert [sister of the petitioner] call you?

A. Yes

Q. What was your reaction?

A. I was shocked.

Q. Did you do anything in response to that development in the case?

A. I don't recall being able to do anything at that point.

Q. Did you contact Ralph Stoddard?

A. No, **not on that Saturday**.

Q. Did you telephone him, contact him in any way?

A. No, **not on that Saturday**.

Q. Did you go see him?

No, **not on that Saturday**. (emphasis supplied)

The Respondent submits that the position taken by the charging document filed by the Investigative Panel would prohibit a judge from availing himself/herself of the protections of the Florida Rules of Civil Procedure from a hostile examiner. If Mr. Johnson does not like the fact that the Respondent's attorneys utilized these rules to make proper objections, or if he believes the objections to be improper, then he can file the appropriate Motion to Compel. At that time, the Respondent's attorneys will file a Motion for Protective Order and the court can determine the appropriateness of the Respondent's attorneys' objections and, if necessary compel her to respond to questions regarding her contact with Judge Stoddard on March 3, 2000. These issues are legal and do not involve judicial ethics. The charging document effectively proclaims that judges cannot avail themselves of the Florida Rules of Civil Procedure and protect themselves from harassing inquiry.

RESPONSE TO ALLEGATION 6.

On or about July 10, 1999, a Saturday, the Respondent was contacted by telephone by Jeanne T. Tate, a local attorney. Ms. Tate related that, while passing by her office that morning, she encountered a tree service on her property cutting down oak trees on the border of her property. Ms. Tate further related that she had attempted to contact the duty judge and Chief Judge F. Dennis Alvarez for assistance in stopping the tree cutters who could not or would not produce a permit for the removal of the trees. The Respondent proceeded to Ms. Tate's office and requested that the supervisor of the work crew produce a permit or other proof of permission for removal of the trees. The supervisor would not or could not produce such a permit. Thereafter, Ms Tate prepared both a Petition for Temporary Injunction and Temporary Injunction Order for the Respondent's review. Because the tree service could not produce proof that they were lawfully removing trees and because Ms. Tate's Petition had properly alleged irreparable harm, Respondent signed the Temporary Injunction. The City was not noticed as city offices were not open on Saturday. However, the tree service was noticed as their representatives were present. In any event, because of the threat of immediate and irreparable injury notice was not required. Respondent signed the order because it was legally sufficient and the tree service could not prove they were acting lawfully.

The records from the City of Tampa clearly indicate no permit or permission to cut the trees had been granted by the City as of July 10, 1999. The tree cutter's statement to the media that they had paid $5,000.00 for the right to trim the trees is false and City records clearly establish the falsity of such a claim. The tree service had not complied with the City's requirements and the City had not granted their request

to cut the trees. The tree cutters were not trimming the trees as was stated to the reporter, but were cutting 30 to 50-year-old oak trees to the ground. They did not have permission to cut the trees that morning and had not paid for that right. The $5,000.00 was subsequently paid to the Tree Trust for compensation for the trees they disfigured and destroyed. The total cost of improvements necessary to remedy the tree cutting was nearly $15,000.00. The Respondent respectfully submits that the tree company attempted to cut the trees down early on a Saturday morning because they knew they did not have permission to do so in hopes of evading City workers who would have stopped their work had it been done on a workday. Then, they could avoid the possibility that the City would not permit destruction of the trees, and only have to worry about negotiating a fine after the fact, which is exactly what occurred.

Was the Respondent to do nothing that day while 50-year-old oak trees were being illegally cut to the ground? Is it an abuse of her power to stop illegal activity from occurring? Judge Alvarez has given a sworn statement stating he would have done the same thing the Respondent did if Ms. Tate had reached him on that morning. The Respondent did not do this to "help a friend" because she would have done the same thing had a complete stranger flagged her down in the street or if she had been the duty judge that weekend. The Respondent stopped the illegal cutting of 30 to 50 year old oak trees. In fact, Ms. Tate's tree had already been destroyed when the Respondent arrived at the scene. The Respondent issued the temporary injunction to protect another oak on the adjacent property that is owned by a charitable organization, yet the Respondent is charged with stopping the cutting on Ms. Tate's property .

It is interesting that this Formal Charge alleges misconduct on Respondent's part for drafting or participating in drafting and signing a Temporary Injunction Order without notice to the City or the tree

service. As for the drafting or participating in drafting, Respondent is aware that the only evidence before this tribunal indicates without question that the only person who drafted these documents was Ms. Tate, but as with other evidence in favor of the Respondent, this evidence has been ignored. In addition, had Respondent drafted or assisted in drafting the referenced order she would only be doing what the Supreme Court has on numerous occasions urged trial court judges to do. The Supreme Court has on numerous occasions cautioned trial court judges about allowing someone else to draft their orders.

As to being admonished because Judge Holloway executed the Order without notice, it should be pointed out that Rule 1.610 of the Florida Rules of Civil Procedure specifically provides for such action and, as one learns early on in law school, temporary injunctive orders by their very nature are issued by judges ex-parte and without notice. Temporary injunctive orders are issued everyday ex- parte and without notice. Most respectfully, what makes this allegation even more absurd is the fact that the adverse party's representative not only received notice (he was standing there) but he was also given the opportunity to respond by providing proper permits or permission from the City.

RESPONSE TO ALLEGATION 7.

On or about July 29, 1999, the Respondent went to the office of Judge Katherine Essrig to see her brother James T. Holloway, who was scheduled to have his uncontested divorce heard. When the Respondent arrived there were many lawyers and litigants present for the uncontested divorce docket of Judge Essrig. Because her brother had an out-of-state flight scheduled that afternoon, the Respondent asked Judge Essrig to hear his case next so that he would not miss his flight. The Respondent addressed Judge Essrig in a normal tone of voice and did not intend to influence Judge Essrig with the prestige of her

judicial office. Judge Essrig did not seem upset nor did she react negatively to this reasonable mundane request. Judge Holloway merely requested that Judge Essrig accommodate a scheduling conflict. Judges and lawyers make such requests of judges on a routine basis. It is respectfully suggested that to charge that this request is somehow an abuse of her authority reeks of selective prosecution by the JQC. If the JQC can charge Judge Holloway with abuse because she asked a fellow judge for a professional courtesy then the JQC could and should charge every judge in the State of Florida with the same type of abuse. It is undeniable that every judge has asked a fellow judge for such courtesies, including asking fellow judges to excuse friends or relatives from jury duty.

FIRST DEFENSE

The JQC has waged its campaign against the Respondent in the media, rather than in fairly conducted proceedings, and flagrantly disregarded the confidential nature of these proceedings. The press was notified about the initial Rule 6(b) hearing when the Respondent had not even had an opportunity to tell her own mother. The press was made aware of the charges and when the hearing would take place. A member of the press was sitting outside the hearing room. From the questions this reporter asked the Respondent's attorney, it was obvious that someone had either read the Notice of Investigation to this reporter or provided her with a copy.

During the settlement negotiations, on the day prior to the filing of the formal charges, Mr. MacDonald advised that if we had not resolved the case by 2:00 p.m. the following day the formal charges would be filed with the Supreme Court. The following morning, Mr. Tozian received a telephone call from a reporter who indicated that he knew of the two-o'clock deadline. Neither the Respondent's attorney nor

the Respondent disclosed this deadline to anyone.

Once it became clear that the JQC's original investigation was not going to achieve the objectives of the JQC and its counsel (namely the Respondent's resignation), her family and she suffered from another leak of confidential information to the press in March of this year by the JQC. The Respondent was the subject of several newspaper articles, a negative editorial and television broadcasts stemming from a wholly unfounded allegation involving a close personal friend of Respondent and her financial disclosures. It should be noted that the press was aware of this investigation involving her close friend at least two days before any witness was ever contacted by the JQC. In fact, it was the press who first contacted the witness involved and not the JQC.

As if the foregoing leaks were not egregious enough, the Respondent's attorney, Mike Rywant, was contacted by a reporter for the Tampa Tribune on May 23, 2001, regarding this new investigation of Respondent by the JQC. This reporter had knowledge of the issues which are contained in this latest notice, a notice that Ms. Butchko had only verbally discussed with the Respondent's counsel on May 19, 2001, wherein she stated that she was preparing the hearing notice at that time. It is amazing that the Tampa Tribune always knows who and what is being investigated and when a notice of investigation is going to be filed, despite the fact that the entire proceedings are required to be confidential in order to protect the reputation of the parties involved and the integrity of the process. Again, neither the Respondent nor her attorneys disclosed this information. The Supreme Court has on several occasions expressed concern regarding breaches of confidentiality by the JQC, its staff and its counsel. In *Graziano*, the Supreme Court noted that the confidentiality requirements promote the effectiveness of the judicial

disciplinary process and protect judicial officers from unsubstantiated charges. Just a year ago, the Supreme Court felt the need to again remind the JQC of its obligations to maintain confidentiality in the *Frank* case, another Hillsborough County proceeding replete with leaks to the media. At least with respect to investigations in Hillsborough County, there is no confidentiality and information seems to flow freely to the media. Since the JQC has failed to heed these previous admonishments from the Supreme Court and has done nothing to stop the leaking of confidential information to the press, it should be no surprise that Respondent's requests that confidential proceedings remain confidential would fall on deaf ears.

It is our firm belief that the initial charges involving the contact with Mr. Yaratch and Judge Stoddard could and should have been amicably resolved. Even Mr. MacDonald expressed to the Respondent and her counsel personally that these matters would have only warranted a "woodshed" talk if it had not been for the issue regarding Respondent's deposition testimony.

SECOND DEFENSE

During its "investigation" the JQC never spoke with anyone present at Respondent's deposition with the exception of Mr. Johnson, a person who had on numerous occasions threatened to "get Respondent's job." There were three attorneys, all in good standing with The Florida Bar, present, including one whom the Respondent did not know previously. Even after the formal charges were filed, no one spoke to these witnesses until depositions were taken in May 2001.

When the special prosecutor came to town in February 2001 for three days to "investigate" these charges, an offer was extended for her to meet individually with Mr. Alley, Mr. Holloway, Mr. Brooks and

the Respondent, but the prosecutor decided not to speak with these important witnesses. However, during the three days the special prosecutor was in town "investigating" the Respondent, some bizarre inquiries were made. For example, witnesses were asked when the Respondent has her nails done (which for the record is during her lunch break). The prosecutor inquired about whether the Respondent is "spoiled," and whether she flaunts her wealth. Several of the witnesses contacted during this visit have approached the Respondent and indicated that the flavor of the inquiry was only to gather negative information. In fact, when witnesses did not agree with the investigator or wanted to make a positive comment about the Respondent, their interviews were terminated. One can only assume that the same motivation to seek out only negative information explains why only Mr. Johnson and not the attorneys present at the Respondent's deposition would be interviewed by the JQC. An investigation should seek to uncover all information, both that which supports the prosecution and that which does not. This type of investigation; one that seeks only negative information may be described by a more cynical person as a witch hunt.

During this time, the JQC had refused to turn over the discovery material which was discoverable by the JQC's own rules. This ultimately necessitated the filing of a Motion to Compel with the Supreme Court. The Supreme Court unanimously voted to order the JQC to follow the rules and produce the documents. However, this obstructionist tactic needlessly caused the Respondent to incur thousands of dollars in additional attorney's fees and impeded her ability to defend herself against the charges of the JQC.

The Respondent is, and has been, willing to admit that she had one telephone conversation with Mr. Yaratch, a witness who has now admitted he gave false and misleading testimony in the custody case before

a judge, who did a very poor investigation by never speaking to the teacher who initiated the child abuse complaint, and who clearly had a predisposition regarding the outcome of his investigation. In addition, the Respondent has admitted, as she has from the beginning, that the contact with Judge Stoddard was improper. The facts as evidenced in the Judge's statement, however, show that her contact did not cause him to recuse himself from the custody case, as Judge Stoddard was going to take that action notwithstanding her contact.

Finally, the depositions of the witnesses as to the initial charges were taken. As the record clearly demonstrates, the charges regarding the Respondent's testimony are unfounded and, in all fairness, should be dismissed. The Respondent believes that the depositions and discovery taken in these proceedings have shown that the other charges filed against her are unsubstantiated and should be dismissed. In fact, Respondent has fought these charges for 9 months and spent a considerable amount of time and money to obtain vindication and a dismissal of these charges. Instead, Respondent is faced with responding to additional retaliatory charges. The allegations are not new, but they, inexplicably or perhaps quite obviously, are only worthy of being pressed by the JQC and its counsel after the original charges, leaks to the press, and harassment of the Respondent's friends and family have failed to achieve her resignation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of July, 2001, the original of the foregoing Answer and Defenses to Amended Formal Charges has been furnished by UPS Overnight Delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927:

with a copy by UPS Overnight Delivery to:

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